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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/191,702	11/13/1998	JEFFREY K. O'HAM	PMS251910	8926
43569	7590	12/23/2004	EXAMINER	
MAYER, BROWN, ROWE & MAW LLP 1909 K STREET, N.W. WASHINGTON, DC 20006			LEUNG, JENNIFER A	
			ART UNIT	PAPER NUMBER

1764

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/191,702

Applicant(s)

O'HAM, JEFFREY K.

Examiner

Jennifer A. Leung

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,2,7,8,11,12,14,15,17-19,36,38 and 40-45.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Hien Tran
HIEN TRAN
PRIMARY EXAMINER

Continuation of 5.

The request for reconsideration has been considered, but it does NOT place the application in condition for allowance, for the same reasons set forth in the Final Office Action.

On page 6 (beginning with the second paragraph under section A.), Applicants argue,

"Franz merely discloses a heating module 1 and a chamber module 2. The heating module 1 includes a soil isolation 10 on which a soil carrying module 13 rests. The chamber module 2 includes chamber walls 17 (See column 5). Although the Office Action alleges that the chamber module 2 includes a bottom part 13 and sidewalls 17, there is no such disclosure in Franz. Franz actually discloses that the carrying module 13 is part of the heating module 1, not the chamber module 2."

The Examiner respectfully disagrees. As disclosed in the brief description of the drawings (column 4, lines 4-6), FIG. 2 represents the perspective plan view, in partly cut representation, of the heating module 1 of the device. As illustrated in FIG. 2, the heating module 1 is shown to comprise the soil isolation 10, but not the bottom part 13, as argued by Applicants. Thus, the Examiner asserts that Franz does not necessarily disclose that the bottom part 13 must be considered as part of the heating module 1. Also, given that the specific function of bottom part 13 is "carrying soil" (column 5, lines 18-27), it would make more sense to one of ordinary skill in the art to associate the bottom part 13 with the chamber module 2.

In any event, regardless of whether one chooses to associate the bottom part 13 with the heating module 1, or the chamber module 2, or both of the heating module 1 and chamber module 2, the apparatus of Franz would still structurally meet the claims. As shown in FIG. 1, when each of the once separable elements of Franz are integrated to form the apparatus of the invention, a "tray" for holding the bulk material 44 is clearly formed by sidewalls 17 and bottom

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part 13 (by definition, a tray is a shallow open receptacle). It is noted that the features upon which applicant appears to rely (i.e., sidewalls 17 and bottom part 13 being of a single, unitary construction) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Leung whose telephone number is (571) 272-1449. The examiner can normally be reached on 8:30 am - 5:30 pm M-F, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn A. Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer A. Leung
December 20, 2004 *JAL*

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